

1 BEFORE THE
2 CITY OF CHICAGO POLICE BOARD
3

4 IN THE MATTER OF)
5 CHARGES AGAINST:)
6)
7 BRANDON TERNAND,) 17 PB 2940
8 POLICE OFFICER)
9

**CERTIFIED
TRANSCRIPT**

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12 REPORT OF PROCEEDINGS held before HEARING
13 OFFICER, ALLISON WOOD, at the hearing of the
14 above-entitled cause at 30 North LaSalle, Room 1220,
15 Chicago, Illinois held on the 22nd day of June, 2018 at
16 the hour of 10:18 a.m. pursuant to notice.

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20 REPORTER: Gwen Bedford
21 C.S.R. No. 084-003700

22

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24

1 APPEARANCES:

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7 Phone: 773-742-5113

8 appeared on behalf of the Superintendent

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11 GOTTRIECH GRACE & THOMPSON

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19 appeared on behalf of the Respondent

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PROCEEDINGS

2 HEARING OFFICER WOOD: We're going to go on
3 the record. This is the case of Police Officer Brandon
4 Ternand, 17 PB 2940. Today's is June 22, 2018.
5 Allison Wood. I'm the Hearing Officer and ask all the
6 parties to identify themselves for the record beginning
7 with the Superintendent?

8 MR. FIEWEGER: Jim Fieweger.

9 MS. WHALEY: Sarah Whaley.

10 MR. THOMPSON: James Thompson on behalf of
11 Officer Brandon Ternand who is present.

12 HEARING OFFICER WOOD: Are you ready to
13 proceed?

14 MR. THOMPSON: I am.

15 HEARING OFFICER WOOD: You want to call your
16 witness?

17 MR. THOMPSON: At this time the Respondent
18 calls Patrick McGee.

19 HEARING OFFICER WOOD: You may proceed.

20 (WITNESS SWORN)

21 PATRICK MCGEE,
22 called as a witness herein, after having been first
23 duly sworn, was examined and testified as follows:
24

1 DIRECT EXAMINATION

2 BY MR. THOMPSON:

3 Q Mr. McGee, could you state and spell your
4 name for the record?5 A Patrick Joseph McGee, P-A-T-R-I-C-K,
6 J-O-S-E-P-H, M-C-G-E-E.7 Q And Mr. M-C-G-E-E, you are currently
8 employed?

9 A Yes, I am.

10 Q And where are you employed?

11 A With the Town of Cicero as a Police Commander.

12 Q And could you describe for us -- I'll call
13 you Commander then or McMCGee?

14 A Mr. McGee.

15 Q Could you describe what your duties and
16 responsibilities are currently at the Cicero Police
17 department?18 A I'm the Director of Training for the Town of
19 Cicero, and I have been there for just over nine years
20 now. I'm also the Range Master. I do all of the Use of
21 Force Training for the Police Department as well as Use
22 of Force Training through the State of Illinois and
23 Mobile Teams. I've been doing Use of Force Training for
24 this Department and also for a previous Department, Cook

1 County Sheriff Police where I served under 32 years.

2 Q And could you describe for us when you
3 indicate "Use of Force Training", what exactly that
4 means and what do you do at the Cicero Police
5 Department with the Use of Force Training?

6 A We do an In-service Training Program for our
7 personnel where everybody gets 32 hours of training per
8 year. Much of it is Use of Force related. I do a
9 lecture block scenario training with them as well. We
10 interject Use of Force and defensive tactics into a lot
11 of our exercises whether it is Active Shooter Drills
12 Crowd Control or whatever.

13 Q And when you train the officers on the use of
14 force is there a guide or guideline that you use as a
15 basis for the Use of Force Training?

16 A We use the same Use of Force paradigm the
17 Chicago Police Department uses. I use that paradigm
18 with my previous Department, Cook County Sheriff Police
19 as well. As a matter of fact, you'll see a lot of the
20 language in the State Training Board's documents on
21 Police Officer's Use of Force and making arrests that
22 comes out of that document as a result of my involvement
23 in the Committee that puts that document together a
24 number of years ago.

1 Q And prior to serving in your capacity as the
2 Cicero Police department, could you describe for us
3 your other -- well, your career as a Police officer?

4 A Yes, sir. I started in April of 1977. I know
5 that may sound a little long ago for a few people on
6 April 18, 1977 when I started on the Sheriff Police. I
7 was in patrol for about six and a half years. Enjoyed
8 it immensely. But my true love was Firearms and
9 Training. And nonetheless I have been going into the
10 range to assist with Firearms Training for a while. So
11 subsequently they must have liked what I did. They
12 brought me in on staff. I was on staff at the Police
13 Academy as a Police Officer for, I think, six years the
14 first time. They found out that I had a bit of a
15 martial arts background. I was teaching defensive
16 tactics. Nonetheless became the Recruit Coordinator
17 from '85 until I got promoted to Sergeant in February of
18 '90.

19 I went back on the street for a year and
20 half, which was customary. When you make Sergeant you
21 go back on the street. They don't leave you in your
22 spot. The boss in the Academy, the Lieutenant said I
23 need him back here. So I came back. I think at that
24 time I was there for four years or five years. I don't

1 remember. I was there as a Supervisor at the Academy
2 once again teaching Use of Force and teaching firearms.
3 Heavily involved with the S.W.A.T. team at that time.
4 I was a sniper on the S.W.A.T. team for many years.

5 Then I went back and forth a number of
6 times back to the street back to the Academy, kind of
7 jokingly said I felt like a Department ping-pong ball a
8 little bit. It was actually a good thing. I think
9 from a credibility standpoint, being inside and being
10 in the Academy for, you know, many, many, many years,
11 you know, straight without being on the street, you
12 kind of lose your feel for it. So going back to the
13 street was always fun. I always benefited from it. I
14 went back and forth to the Academy.

15 Then in 2005 or 2004 they made me
16 Director of the Academy. And in 2005 they promoted me
17 to Lieutenant. I stayed there as Director of Training
18 for the Sheriff Police. And then eventually became a
19 Field Lieutenant and then an Area Commander in both
20 north and south areas individually until my retirement
21 from the Department at the end of 2008.

22 Q And outside of your service with the Cicero
23 Police Department and the Cook County Sheriff
24 Department, did you receive any additional -- through

1 the years any additional outside training or education
2 relative to the Use of Force?

3 A Yes. The Sheriff's Police and Cicero, I have
4 to say both Departments have been very, very good to me
5 about providing me with training. I have been to so
6 many Use of Force classes over the years I can't even
7 count them all, through both the State of Illinois and
8 law enforcement -- Illinois Law Enforcement Training
9 Board, certified classes. I've been through academies
10 in Massachusetts. I have been to the FBI Academy in
11 Quantico, Virginia. They were very, very good about
12 assigning me to a lot of places.

13 Q Have you ever -- Mr. McGee, besides this
14 case, have you ever been retained by lawyers as it
15 relates to cases or litigation previously?

16 A Yes.

17 Q And have you testified in court before?

18 A Yes.

19 Q Could you give us an estimate, Mr. McGee, how
20 many times you have been retained as a Use of Force --
21 well, strike that.

22 What type of expert services have you
23 been retained for previously?

24 A Well, Use of Force, firearms, police

1 procedures, S.W.A.T. procedures, weapons.

2 Q And how many times approximately, Mr. McGee,
3 have you testified in litigation related to those
4 subject matters?

5 A I think this is my 26th case.

6 Q Have you previously been received by courts
7 of competent jurisdiction in those fields that you
8 described Use of Force in the other areas?

9 A Yes.

10 Q Has that been -- have you been accepted in
11 State Courts in Illinois and Federal Courts in
12 Illinois?

13 A Yes.

14 Q Not too long ago, I retained you to review
15 the circumstances and facts in this case, is that fair?

16 A Yes.

17 Q In the course of doing that, I provided you
18 with materials to review, is that fair?

19 A Yes, sir.

20 Q Could you tell us what materials you reviewed
21 relative to providing your opinions here today?

22 A Well, a significant amount of documents, a
23 large stack pertaining to the police reports, reports
24 from, you know, from this body as well, any number of

1 photographic material, some thumb drive material to
2 involve the interviews and what have you, also some film
3 footage and the like. Training records, Use of Force
4 documentation and General Orders and the like from the
5 Chicago Police Department.

6 Q And were the materials that were provided to
7 you sufficient for you to render an opinion relative to
8 Officer Brandon Ternand's Use of Force as it relates to
9 the Chicago Police Department Use of Force guidelines?

10 A Yes, sir.

11 Q And you'll hold an opinion with respect to
12 Officer Ternand's compliance or lack thereof to the
13 Chicago Police Department's Use of Force guidelines?

14 A Yes.

15 Q And what is that opinion?

16 A I believe the Officer acted reasonably
17 considering all the circumstances involved.

18 Q In your opinion, do you believe that Officer
19 Brandon Ternand departed in any way from the Use of
20 Force -- the Chicago Police Department's Use of Force
21 guidelines relative to the shot that he fired in this
22 matter?

23 A No.

24 Q Can you describe for us, Mr. McGee, what your

1 findings were with respect to the actions that Officer
2 Ternand took when he observed Dakota Bright enter the
3 alley in November of 2012?

4 A Well, at that point he sees an individual who
5 has a rather large revolver in his hand, which in my 41
6 years of being a Police Officer, if I see a guy with a
7 weapon in his waistband or what have you, that is enough
8 of a flag. But to see it in his hand, I would ask
9 myself what is he doing? Is he coming from a crime? Is
10 he going to a crime? Is he fixing to shoot me? What is
11 going on?

12 So with that and then the subject leaves
13 the location that he was at and starts to run, the
14 Officer has no choice but to go after him.

15 Q Why is that, Mr. McGee?

16 A You can't leave him running through the
17 neighborhood with a pistol in his hand. This was in
18 2012. They didn't even have Conceal Carry at that
19 point, let alone open carry in your hand. We have a
20 saying among the Firearm Instructors, "weapon in hand,
21 weapon in use." If this guy has the weapon in his hand,
22 he is either just using -- about to use it or have used
23 it. We can't let him go running through the
24 neighborhood.

1 Q Was Dakota Bright committing a crime in
2 November of 2012 when Officer Ternand observed him at
3 the mouth of the alley with his revolver in his hand?

4 A By virtue of him possessing that weapon at
5 that point in time, yes, he would be.

6 Q And was he committing a misdemeanor or a
7 felony?

8 A It should be a Class 4 Felony.

9 Q When Dakota Bright began to flee, did you
10 make any findings relative to Officer Ternand's
11 response to that flight?

12 A Well, initially Officer Ternand and Officer
13 Razo were pursuing him in an automobile. The problem
14 with pursuing in an automobile is that you limit
15 yourself to places that the automobile can get to and
16 through. The fortunate thing about working in the City
17 of Chicago and Chicagoland and Cicero is almost
18 identical as far as the way we're set up on a grid is
19 that you can move through areas and have other officers
20 parallel you and what have you. If I have a car on a
21 street or in an alley and this thing goes through alleys
22 or a gangway or over fences, for the most part we are
23 all on a grid. So we are going to be able to fan out.
24 I think that is what he attempted to do. I think that

1 is a sound tactic.

2 Q During the course of your review of the
3 materials, did you have an opportunity to listen to the
4 OEMC dispatch call that Officer Razo made upon
5 observing Dakota Bright in the alley with the firearm
6 and begin to flee?

7 A I believe I did. It is in the back of my mind
8 somewhere, but I can't --

9 Q Officer Razo communicated to OEMC not only
10 the description of Dakota Bright, but he also indicated
11 that the subject was running holding his left side. In
12 your experience and the many years of working in this
13 metropolitan area, what does that mean exactly to you?

14 MR. FIEWEGER: Objection. Outside the
15 disclosure.

16 HEARING OFFICER WOOD: Sustained.

17 BY MR. THOMPSON:

18 Q So tell us about -- did you make any findings
19 relative to Officer Ternand exiting his vehicle in foot
20 pursuit of Dakota Bright?

21 A I think it was appropriate at the time.

22 Q And why is that?

23 A You're likely not going to catch him as easily
24 in a car as a result of being limited to as to where you

1 can travel with that car.

2 Q Is that -- is a foot pursuit by a Police
3 officer a dangerous endeavor?

4 A Yes.

5 Q And why is that?

6 A Because so many things can happen in both a
7 foot or vehicle pursuit. I have been in both many, many
8 times and they are hair raising.

9 Q And is a foot pursuit of an armed subject, in
10 your experience, is that a common endeavor by officers?

11 A It happens all too frequently. It happens
12 quite a bit in Cicero as well.

13 Q Now, did you make any findings relative to
14 Officer Ternand's communications with the other
15 officers and/or his partner in the immediate area?

16 A He did communicate I believe it was Officer
17 Bruno verbally without the radio that Dakota Bright had
18 a pistol.

19 Q Is that significant in your mind?

20 A Absolutely. He is trying to warn his partner
21 and other officers on the scene that the danger level
22 just went up and is up and to be cautious of it so that
23 his partner does not get shot.

24 Q What did he tell Officer Bruno, if you

1 recall?

2 A He's got a gun.

3 Q Did you make any findings relative to
4 Brandon -- Officer Ternand's use of force and/or
5 discharge of his weapon at Dakota Bright?

6 A Yes.

7 Q And what were your findings?

8 A Well, it's a case where Mr. Bright had a
9 pistol in his hand. The officers know that. I'm sure
10 Mr. Bright knew that. At that point in time when you
11 are seen by the police, you are going to wind up
12 fleeing, fighting or freezing, one of the three. And
13 some people will just freeze where they are at. Some
14 people will flee like crazy and some people will turn
15 and fight nonetheless. He did not freeze. He started
16 to take off. But in doing so, he makes the move to
17 place the weapon into his belt. That is the same
18 location that he said to be holding throughout the
19 entire foot pursuit.

20 In the one bit of video footage that is
21 that was available, you could see him running pretty
22 well. And that right arm is going as it would for most
23 people when they are running, but the left arm is very
24 obvious for the lack of movement, which indicates and

1 confirms the Officer's statement that hey, he was
2 holding onto his left side. When you wind up having
3 something tucked into your belt, you don't want it to
4 fall out. Subsequently you hold it together.

5 So nonetheless as he is going over
6 fences and the like, the Officer knows exactly where he
7 put that weapon. Okay. And in doing so and knowing
8 that, when the individual makes a move to that weapon,
9 the Officer doesn't have to wait until a weapon comes
10 out and the weapon is discharged at him shooting him.

11 Q Why is that, Mr. McGee?

12 A Because then it would be too late possibly.
13 And he doesn't have to wait until the individual fires
14 at him. Even if he misses, he doesn't have to because
15 the next one is going to be the one that hits him. He
16 doesn't have to wait until the individual points the
17 weapon at him. All he has to do is reasonably believe
18 that the weapon is there and the individual makes a move
19 for it.

20 Over the years, I've trained no fewer
21 than 6,000 recruits and 11,000 in-service personnel. I
22 have taught all over the place. One thing that we talk
23 about is -- the three things that are necessary for an
24 attack to proceed is a weapon, intent and delivery

1 system.

2 Q Now in this particular case, did you find
3 that all three of those elements were present?

4 A A reasonable officer would believe that a
5 weapon was present at that point in time. I would say
6 this, being a policeman now for 41 years, I have been
7 carrying a firearm for those 41 years. I have to say
8 that, you know, probably more so years ago when I was
9 younger my lead foot led me to be stopped on occasion.
10 When I would be stopped by the police, I would make sure
11 that my hands were on the steering wheel. Obviously off
12 duty and plainclothes and whatever. I always tell my
13 Officers if you are going to carry, make sure you have
14 the badge right next to the gun so they see one, they
15 are going to see them both and there is no mistake.
16 Keep them hands away from that gun darn it. You don't
17 want them to think you are going for it and what have
18 it.

19 The idea that this gentleman had this
20 pistol in his hand and then squirreled away and ran
21 away is something I could not fathom myself doing in a
22 months of Sundays. I couldn't do that. Yes, sir,
23 that's it.

24 Q That is in fact what happened in this case?

1 A Yes, sir.

2 Q Why is that significant?

3 A Well, he is either going to freeze, flee or
4 fight. We've eliminated the first one. He didn't stop.
5 He's fleeing. And now at some point in time when the
6 other guys are closing in on him or he is moving into a
7 location where we've got officers that were parallelling
8 him and what have you, and he knows -- he probably knows
9 that neighborhood as well, if not better, than those
10 officers. At this point in time is the time to turn and
11 fight, and who knows. But nonetheless, when he goes to
12 that last location where that weapon was seen being
13 placed by the Officer, the Officer winds up figuring, he
14 is reasonable to do so, figuring he's going for that
15 pistol. Back to my statements about I don't have to
16 wait until somebody shoots me to shoot them and actually
17 hits me with a bullet, I don't have to wait until
18 somebody shoots at me in order to shoot them. I don't
19 have to wait until they point the weapon at me. If the
20 weapon is there and they go to grab it, it would be in
21 my best interest, okay, and reasonable, completely
22 reasonable, to shoot them. It doesn't matter if they
23 haven't even touched the weapon because if the weapon
24 was right there, they could get it on you in a

1 heartbeat. And action is virtually always going to be
2 faster than the reaction that it initiates. Guaranteed.

3 I can't tell you how many thousands of
4 scenarios I have been involved in where we have had
5 people taking us into custody who were playing the bad
6 guy and they've taken their gaze off of us for a moment
7 and all of a sudden they are short with a paintball.
8 Oh shit, where did that come from? You are not
9 100 percent in the game here. You took your eyes off
10 me. That is reality. That is totally reality. And
11 when I see an Officer understands that in a scenario, I
12 feel I'm doing my job as a trainer.

13 MR. FIEWEGER: I am going to object at this
14 point of the narrative. There has been no question for
15 some time.

16 MR. THOMPSON: I'll ask another question.

17 BY MR. THOMPSON:

18 Q I believe that you said there were three
19 factors and the second factor was intent?

20 A Yes, sir.

21 Q Did you make any findings relative to intent
22 in this matter?

23 A Well, intent can be stated or I should say
24 expressed. Like if I said "I'm going to punch you in

1 the nose" that is expressed and/or implied. If I was
2 close to you and standing in front of you and running
3 and looking like I'm going to punch you, this is implied
4 intent. If there is a weapon that was placed into my
5 waistband and I do this (indicating), that is starting
6 to imply intent here. And I've got a concern with that.

7 Do we wait until it comes out? Okay.

8 At that point it is likely too late. And then the last
9 thing is delivery system. Is that weapon something
10 that can deliver its power, its lethal power to its
11 apparent intended target at the distance it is being
12 deployed at.

13 Q Was that the third condition or element in
14 this instance?

15 A Absolutely. You have a revolver. Being an
16 old timer, I think they are a lot more accurate
17 than some of the autos are. I started with a revolver.
18 You could hit targets at 75 feet all day long, some
19 cases 75 yards.

20 Q What about Dakota Bright's actions had
21 anything to do with the delivery system?

22 A Well, he's a young guy obviously and has the
23 weapon. One would think that he would be able to be
24 familiar enough with it to discharge it properly and

1 what have you. So an individual can shoot somebody at
2 50 feet with a revolver with a little problem.

3 Q What about his actions at that moment had any
4 correlation with the delivery system?

5 A Well, he's attempting -- it would appear that
6 he's attempting to access that weapon. He is going for
7 it at that point in time. Once he gets it in his hands,
8 it is just a matter of pulling it up and would he be
9 able to.

10 Q And so are you saying he is initiating the
11 delivery system when he is reaching to his side?

12 A I think he was initiating it at that point,
13 attempting to. If I have a gun laying on this counter
14 right here on this rail and I wind up starting to move
15 for it, I'm attempting to activate my delivery system.
16 I'm attempting to put the wheels in motion at that
17 point.

18 Q What about those actions immediately prior to
19 Officer Ternand discharging his weapon? What signals
20 are those actions sending to a reasonable police
21 officer?

22 A First of all, if he, Dakota Bright, his intent
23 is on making sure that the Officer knows that he not a
24 threat to him, if I were him I would put my hands up

1 immediately.

2 Q Was there anything in the record that
3 indicated that Dakota Bright raised his hands above his
4 head?

5 A No.

6 Q Was there anything else?

7 A He was continuing to run. He was clearing
8 fences and what have you. And the last thing I would do
9 is put my hands anywhere near my waistband or anywhere
10 where people would traditionally carry guns. Let alone
11 that he's managed to be seen placing it in a particular
12 spot. I'm going to keep my hands well away from that
13 area.

14 Q And what other signals was his actions
15 sending to a reasonable police officer?

16 A Flight or fight is right there. He is getting
17 to the point where it appears since the flight ain't
18 working, the fight is going to have to. And going in
19 for it, I think any reasonable police officer knowing
20 that he had just placed a weapon there and now he winds
21 up going back to that location, one would be -- it would
22 be unreasonable to believe that, you know, he wasn't
23 going for something. Okay. And I put a lot of it on,
24 you know, the behavior of the individual. As I said,

1 and it is not just me, it is just I see a police
2 Officer, yes, sir.

3 Q Are you familiar with a Supreme Court case of
4 Graham v. Connor?

5 A Yes.

6 Q Is that case significant in your evaluation
7 and findings in this matter?

8 A Yes, it is.

9 Q And could you describe for us the
10 significance of the Supreme Court case of Graham v.
11 Connor?

12 A In Connor, the idea is that a police officer's
13 actions need to be reasonable. It is oftentimes a
14 tough, you know, tough thing to define in many respects.
15 But what would the reasonable man do in a certain
16 circumstance and what have you. If I were to be an
17 individual that wound up to pretend to shoot at you, I
18 have my finger pointed at you, that would not be a
19 reasonable thing for somebody to do. If you had seen me
20 with a gun in my hand and I run off, okay. That is not
21 a reasonable thing to do. It means you are looking to
22 come back on me, get away or whatever the case might be.
23 But with Graham, what was done was they asked about, you
24 know, there being a serious enough crime.

1 Q What does Graham set forth elements or prongs
2 to consider when you are evaluating an officer's use of
3 force?

4 A Yes.

5 Q What are those prongs or elements?

6 A We look at the seriousness of the crime
7 involved. We also look at the immediate threat. And
8 the immediate threat, and I'll get to the third one
9 trying to escape by flight. But with the immediate
10 threat, essentially that is only one that is necessary,
11 okay, of them. I give the example, and I have given the
12 example in classes that I have taught and also with
13 other instructors who teach for the state. Let's say
14 you have a guy who has a concealed carry permit and he
15 is authorized to carry that pistol and he has a valid
16 Firearm Owner Identification card. He is not committing
17 a crime by virtue of carrying a pistol. Yet he points a
18 pistol at a police officer or a citizen, at that point
19 that individual is committing a Class A misdemeanor,
20 which is aggravated assault. It is a Class A. It not a
21 felony. It certainly is not a forcible felony. He is
22 not attempting to flee or anything, and the police
23 officer shoots him at that point. And the answer is
24 yes, he better, because what's present there is weapon,

1 the pistol, intent, implied by virtue of pointing it at
2 the officer, okay, and he is certainly close enough to
3 him in order to deliver that bullet to him at that
4 distance. If the weapon, intent and delivery system are
5 present, attack is implement. That is just the rule
6 period. If weapon, intent and delivery system are
7 present, it is imminent. It is happening.

8 Q What other analysis does Graham v. Connor
9 require you to consider when applying the facts of a
10 case to their analysis?

11 A They have the seriousness of the crime. They
12 are looking at the immediate threat and last, but not
13 least, attempting to escape.

14 Q How many prongs does a reasonable officer
15 have to satisfy to be justified in the use of force?

16 A When I go back to that, to my thoughts on
17 that, and basically the second one, the immediate threat
18 is all that is necessary in some cases.

19 Q Well, what's the seriousness of the crime
20 that Dakota Bright was committing on November 2012?

21 A What you have is an individual who placed a
22 pistol into a location on his body and is involved in
23 attempting to flee. Then moves his hands towards that
24 same location on the body where he had placed the pistol

1 within the last minute. The reasonable officer, the
2 reasonable person would be able to come to no other
3 conclusion that he was attempting to access that pistol
4 at that moment.

5 Q In your opinion, does the actions of Officer
6 Ternand on November of 2012, does that satisfy the
7 objective reasonableness standards set forth in
8 Graham v. Connor?

9 A Yes.

10 Q During the course of your review of the
11 materials in this matter, did you have an occasion
12 to -- did you review the manner in which Officer
13 Ternand discharged his firearm that day?

14 A Yes.

15 Q Did you make certain findings with respect to
16 Officer Ternand's discharge of the firearm that day?

17 A What he likely did was to get that weapon out
18 quickly and point it at Mr. Bright quickly because he
19 was at that point in fear for his life. Reasonably
20 thinking that this gentleman was going for a gun and
21 needing to push that weapon out in order to get a round
22 down range on him.

23 Q What about the actual movements of Officer
24 Ternand when he raised that firearm? Did you make any

1 findings relative to that?

2 A Well, just like anything else that you do over
3 and over and over again through repetition, you become
4 very familiar with those movements. I'm sure everybody
5 in here drive cars. We've all been driving cars for
6 many, many years. Probably myself I have got millions
7 of miles of driving in over the years. I have to say
8 that heaven forbid somebody winds up running out in
9 front of me, my right foot would come up off that gas
10 pedal, move over a little bit to the left and depress
11 the brake pedal. I'll be thinking about that and
12 telling the foot to do that. It happens to all of us.
13 And I'll veer away from that person coming towards me
14 and what have you. The martial arts folks in the Orient
15 refer to that as "mushin", thinking or acting with no
16 mind. Meaning you do things just because you have done
17 it so many thousands and thousands of times.

18 Well, Officer Ternand, I'm sure got to
19 fire probably at least 1,000 rounds of ammunition at
20 the Chicago Police Academy. I know they used to do
21 that at the Academy that I was the Director at. And
22 then all the times he's fired since then and what have
23 you. So this becomes instinctive. That weapon is in
24 your hand and it goes to a particular position and you

1 point and you fire because you have done it so many
2 times.

3 Q Is it significant that Officer Ternand only
4 fired his weapon one time?

5 A I've seen that on a number of occasions. We
6 had a shooting in my other department that involved the
7 same similar thing where the individual was shot once
8 and that was it, but the individual dropped immediately.

9 Q What is the actual purpose of firing your
10 weapon at a subject?

11 A To stop them.

12 Q Did you make any findings relative to whether
13 or not the one shot that Officer Ternand fired stopped
14 what he believed to be the deadly threat?

15 A I believe it did. And I would venture to say
16 that by virtue of where the shot impacted Mr. Bright he
17 probably dropped pretty quickly.

18 Q Did you have an opportunity to review the
19 Illinois State labs analysis of the round that Officer
20 Ternand fired?

21 A Yes, sir, I did.

22 Q Was there anything significant that you found
23 relative to that analysis or test?

24 MR. FIEWEGER: Object. None of this is in

1 disclosure.

2 MR. THOMPSON: His disclosure is a summary of
3 his opinion and he definitely provided opinions
4 relative to the use of the weapon?

5 HEARING OFFICER WOOD: The question you asked
6 is sustained. Move on.

7 MR. GRACE: What about the rebuttal to the
8 expert that testified about the ricochet?

9 HEARING OFFICER WOOD: This is direct. This
10 is your witness. Let's stick there and stay focus.

11 BY MR. THOMPSON:

12 Q Were you familiar with the distance that
13 Officer Ternand fired his weapon?

14 A Fifty feet.

15 Q And what, if any, significance did that have
16 in your finding relative to Officer Ternand's
17 discharge?

18 A That's within the parameters of the distance
19 that we shoot. The Illinois Law Enforcement Training
20 Standard Board's qualifications. We shoot at 21 feet,
21 45 feet and 75 feet.

22 Q And why do you train police officers on those
23 various distances?

24 A Well, there has been statistical analysis

1 pertaining to the officer's ability to be able to hit
2 targets at those various distances and what have you.
3 It's been a Training Board's position to have us shoot
4 at 75 feet maximum every since I have been a police
5 officer. I remember doing that back in 1977.

6 Q So the distance at which Officer Ternand
7 fired, you believe that was unreasonable under the set
8 of circumstances and fact that you reviewed?

9 A No, sir.

10 MR. THOMPSON: That all the questions I have.

11 HEARING OFFICER WOOD: Thank you. Cross.

12 CROSS-EXAMINATION

13 BY MR. FIEWEGER:

14 Q I have just a few questions for you.

15 Sir, you testified that you are the
16 Commander with the Cicero Police Department who is in
17 charge of training, is that correct?

18 A Yes.

19 Q And also in charge of the range?

20 A Yes, sir.

21 Q And have you been in that position since
22 2013, the Training Commander?

23 A I have, yes.

24 Q Prior to that, were you the first

1 Superintendent?

2 A First Deputy.

3 Q First Deputy Superintendent. Doing some
4 research on your background in preparation for
5 today's hearing I found a July 21, 2013 article that
6 was published in the Sun-Times and this indicates that

7 --

8 MR. THOMPSON: Can I have a moment so I can
9 review this? I haven't seen this article before.

10 MR. GRACE: Judge, this has never been
11 tendered to us.

12 MR. FIEWEGER: I'm not offering it. I'm
13 going --

14 MR. THOMPSON: I just haven't had an
15 opportunity to review it.

16 MR. GRACE: Judge, this is --

17 MR. FIEWEGER: The only part I'm interested
18 in is the second page, first sentence.

19 MR. GRACE: This is an ambush. You need to
20 show us the documents that they are going to question
21 the witness on. It is open discovery.

22 HEARING OFFICER WOOD: You don't know what
23 you are going to impeach until you hear direct.

24 MR. GRACE: You still have to show us.

1 HEARING OFFICER WOOD: You don't know what
2 you are going to use until you need to use it. That is
3 what happens on cross-examination. Take a minute and
4 read it.

5 COURT REPORTER: Counsel, can I have your
6 name?

7 MR. GRACE: I'm sorry. My name is Tim Grace,
8 G-R-A-C-E.

9 HEARING OFFICER WOOD: Okay. Proceed.
10 BY MR. FIEWEGER:

11 Q Mr. McGee, as I said, I found an article from
12 2013 in the Sun-Times that indicated that you had --
13 were assigned to your current position as Commander.
14 That you were demoted from First Deputy Superintendent
15 to Commander in Charge of Training, is that correct?

16 A Yes.

17 Q As you said, you are currently employed by
18 the Cicero Police Department, correct?

19 A I am.

20 Q But you also have what I would describe as
21 kind of a side business of offering expert testimony,
22 correct?

23 A Well, we could call it that.

24 Q Well, you actually advertise your services --

1 A I do

2 Q -- as an expert witness?

3 A Yes.

4 Q And this isn't something that somebody
5 sometimes calls you. This is the type of work that you
6 seek out on your own, correct?

7 A Yes.

8 Q And you are familiar with the Cicero
9 ordinance that limits outside employment by employees
10 of the Cicero Police Department, correct?

11 A I am.

12 Q And that ordinance requires you, actually
13 prohibits outside employment unless it is approved by
14 the Superintendent, correct?

15 A Yes.

16 Q And I take it that the Superintendent has
17 approved your side business of offering expert
18 testimony, correct?

19 A Yes.

20 Q And did you have to obtain permission from
21 the Superintendent to offer testimony today?

22 A No.

23 Q So you never presented the Superintendent
24 with the fact that you were contacted about providing

1 testimony in this case?

2 A No.

3 Q Does he know that you are working on this
4 case?

5 A He knows I work on cases.

6 Q But he doesn't know that you are actually
7 working on this case?

8 A I don't think so.

9 Q So he doesn't know that you are offering
10 testimony or an opinion that is inconsistent with the
11 position that has been taken by the City of Chicago in
12 this engagement?

13 MR. GRACE: How could he testify as to what
14 somebody knows?

15 MR. FIEWEGER: I'll reask it.

16 BY MR. FIEWEGER:

17 Q You didn't tell him that you were working on
18 this case?

19 MR. GRACE: Asked and answered. Objection.

20 HEARING OFFICER WOOD: Continue.

21 BY MR. FIEWEGER:

22 Q So you never went to the Superintendent and
23 explained to him I've been asked to express an opinion
24 in this case that is contrary to the position that is

1 taken by the Chicago Police Department in this case,
2 correct?

3 A Correct.

4 Q Are you being paid for your services?

5 A Yes.

6 Q How much are you being paid?

7 A \$150 an hour.

8 Q Is that for file review preparation and
9 testimony, all the same rate?

10 A I believe testimony is \$200.

11 Q So as we sit here today, are you being paid
12 \$200 an hour?

13 A Yes.

14 Q And you are paid \$150 an hour to review the
15 file?

16 A Yes.

17 Q And did you let the Superintendent know the
18 rate of pay that you are receiving on this engagement?

19 A He may have heard my rates before, but not
20 specifically on this case. It is not a requirement in
21 order to get approved for outside employment.

22 Q About how much time have you spent working on
23 this case?

24 A Somewhere in the area of about 15 hours.

1 Q Fifteen, 1-5?

2 A 1-5.

3 Q Now, as Mr. Thompson elicited from you, you
4 offered opinions in litigation prior to this,
5 obviously?

6 A Yes.

7 Q And in one of the cases that you previously
8 offered testimony in a case called Berke vs. Calhane
9 which was pending in the Northern District of Illinois,
10 correct?

11 A It rings a bell.

12 Q So Berke vs. Calhane was a case where Berke
13 sued a police officer in the Village of Oak Lawn and
14 the officer violated his constitutional rights when he
15 used excessive force during the arrest. Does that ring
16 a bell?

17 A I don't recall the case honestly.

18 Q Did you have a case that was pending before
19 Judge Kindle?

20 A No, I do not.

21 MR. FIEWEGER: Can I approach, your Honor?

22 HEARING OFFICER WOOD: Yes.

23 MR. FIEWEGER: That's printed on both sides.

24

1 BY MR. FIEWEGER:

2 Q Sir, I have handed you a copy of an opinion
3 that was issued in the case Berke vs. Calhane on
4 August 2010. Take a quick look at that. All I'm going
5 to ask is, based on reviewing of that, does it refresh
6 your recollection at all about you offering opinions In
7 Berke vs. Calhane.

8 A As I said, I remember the name, okay, but this
9 is like eight or ten years ago. I vaguely remember
10 this.

11 Q Now that you have had an opportunity to
12 review that, is it your recollection that you had
13 offered three separate opinions in that case, correct?

14 A Apparently, yes.

15 Q And one of the opinions was that the officer
16 in that case did not use excessive force, correct?

17 A Correct.

18 Q And Judge Kindle excluded you from offering
19 that opinion in that case?

20 A Apparently.

21 Q She said you basically used the wrong
22 standard in assessing whether or not excessive force
23 was used in that case, correct?

24 A I don't think -- like I said, I vaguely

1 remember it.

2 Q But based on your review of that opinion and
3 your vague recollection, that is what happened,
4 correct?

5 A Yes.

6 MR. GRACE: We've got to object. This is why
7 you give each party discovery.

8 HEARING OFFICER WOOD: This is
9 cross-examination.

10 MR. GRACE: He doesn't remember the case,
11 your Honor.

12 HEARING OFFICER WOOD: He's answering the
13 question.

14 MR. GRACE: I don't know if that is what the
15 rule says either.

16 HEARING OFFICER WOOD: He's answering the
17 questions.

18 MR. GRACE: Objection.

19 HEARING OFFICER WOOD: What are you objecting
20 to?

21 MR. GRACE: I'm objecting to the fact, your
22 Honor, with all due respect to the prosecution, that
23 they've got these things, these documents --

24 HEARING OFFICER WOOD: Which you could have

1 gotten too. This is your expert.

2 MR. GRACE: They are using them.

3 HEARING OFFICER WOOD: They get to use them.

4 MR. GRACE: What about the -- okay, Judge, my
5 objection is valid for the record.

6 HEARING OFFICER WOOD: What are you objecting
7 to?

8 MR. GRACE: I'm objecting to the fact that he
9 is asking this expert opinion questions about a Federal
10 Judge's ruling from 2010. Okay.

11 HEARING OFFICER WOOD: What is the basis of
12 your objection?

13 MR. GRACE: Relevance, violation of
14 discovery, relevance and violations of discovery.

15 HEARING OFFICER WOOD: What is the violation
16 of discovery?

17 MR. GRACE: They never gave us the first
18 document.

19 HEARING OFFICER WOOD: I want to make the
20 record. The objection is sustained. This is valid
21 cross-examination. This is a case that your expert was
22 in that you could have found.

23 MR. FIEWEGER: Your Honor, just so the record
24 is clear, along with their report they gave us a

1 disclosure of cases that he's testified in. It is
2 listed on it, as is the next case I'm going to bring up
3 with him.

4 HEARING OFFICER WOOD: So what is the
5 problem? That he's using it? He is using information
6 you gave him. There is no ambush. There is nothing
7 that is improper here.

8 MR. GRACE: What about the document that he
9 gave us regarding the newspaper article?

10 HEARING OFFICER WOOD: Which is something you
11 could have found. It is your witness.

12 MR. FIEWEGER: I found it by Googling it.

13 MR. GRACE: The witness has testified that he
14 recalls the case vaguely.

15 HEARING OFFICER WOOD: Yes. And his answer
16 stands.

17 MR. FIEWEGER: It goes to the weight.

18 HEARING OFFICER WOOD: Exactly. Your
19 objections are overruled. Continue.

20 MR. FIEWEGER: I'm done with that, your
21 Honor. You can put that aside or keep it.

22 BY MR. FIEWEGER:

23 Q Mr. McGee, another case that you offered
24 expert testimony in is the case of Haley vs. Smith. Do

1 you remember that one? That was a case involving the
2 Sangamon County Sheriff's office in which an individual
3 claimed that he was having a seizure within a cell at a
4 jail. Does that ring a bell?

5 A Vaguely, yes.

6 Q And you offered testimony in that case. And
7 one of the issues in that case was whether or not this
8 individual was actually having a seizure or whether he
9 was resisting the actions taken by the law enforcement
10 officers, correct?

11 A Without getting back into it and looking at
12 everything, I vaguely remember it.

13 MR. FIEWEGER: May I approach, your Honor?

14 HEARING OFFICER WOOD: Yes.

15 BY MR. FIEWEGER:

16 Q To see if it would help to refresh your
17 recollection, Mr. McGee, I have handed you a copy of
18 the Expert Disclosures Report that you prepared and
19 that defense counsel filed with the Court in Haley vs.
20 Smith. If you could review that at your leisure.

21 Have you had an opportunity to review
22 that report?

23 A I have.

24 Q And reviewing that report, does that refresh

1 your recollection about the Haley vs. Smith case?

2 A Yes.

3 Q And that was a case that was filed in the
4 Federal District Court for the Central District of
5 Illinois?

6 A Yes.

7 Q And as said before, this dispute involved a
8 use of force within the Sangamon County Jail, correct?

9 A Yes.

10 Q And the facts of that case involved an
11 allegation that the Plaintiff was suffering a seizure
12 and you offered an opinion as to whether or not the
13 Sheriff used the correct level of force in responding
14 to the circumstances of Mr. Haley's cell?

15 A Yes.

16 Q As I said before, there was an issue as to
17 whether or not Mr. Haley was having a seizure or
18 whether he was actively resisting, correct?

19 A As I recall.

20 Q And it was your opinion that the use of force
21 that was used on Mr. Haley was not excessive. It was
22 correct? Is that right?

23 A Yeah. In that he was attempting to kick and
24 strike and what have you.

1 Q In that case the Sheriff officers used a
2 taser on Mr. Haley, correct?

3 A Yes.

4 Q And it is your opinion in that case that even
5 if Mr. Haley was suffering a seizure, it was okay to
6 use the taser on him, right?

7 A At the time that they utilized the taser, did
8 they know that he was suffering a seizure? Did they
9 suspect that he suffering a seizure?

10 Q But it was your opinion even if he was
11 suffering a seizure, it was okay to use that taser on
12 him?

13 A The taser is a tool that is utilized which
14 actually winds up becoming more humane than piling on
15 people.

16 Q But my question is in that case, it was your
17 opinion that even if Mr. Haley was suffering a seizure,
18 it was appropriate to use a taser on him?

19 A I believe it would be, considering in CIT
20 training, which the Chicago Police Department is
21 involved in, and most of my people are involved in, I
22 was the first one to go through it, the recommendation
23 for an individual experiencing something known as
24 "excited delirium", is to utilize the taser in order to

1 get it over quick so that they don't struggle as much as
2 if we had a whole bunch of Officers pile on him which is
3 what eventually what caused their death. The use of the
4 taser allows us to get them in cuffs quick.

5 Q Were you aware that the company that
6 manufactures the taser has issued a notification not to
7 use a taser on somebody who is known to be suffering an
8 epileptic seizure?

9 A No, I'm not.

10 Q Mr. McGee, when were you retained on this
11 case?

12 A I believe it was the end of May, beginning of
13 June, somewhere in there.

14 Q And was it your understanding that at the
15 time that you were retained there had already been
16 testimony elicited in the case?

17 A From whom?

18 Q From all of the other witnesses other than
19 you?

20 A I was aware that there had been testimony.

21 Q And you provided us a report that listed the
22 information that you reviewed in preparing your
23 opinion, correct?

24 A Yes, sir.

1 Q And you don't include in that any of the
2 transcripts of any of the actual testimony in this
3 case, correct?

4 A I believe you're right.

5 Q Did you know that the transcripts for all of
6 the witnesses, other than you, had been prepared and
7 completed before you issued your report?

8 A I believe I did look at them. I advised that
9 we -- I had looked at everything that was provided to
10 me.

11 Q I'm not suggesting that you didn't look at
12 something that was given to you. I'm suggesting you
13 weren't given any transcripts from the actual hearing
14 itself, correct?

15 A I don't recall that honestly.

16 Q You don't list them in your report.

17 A Right.

18 Q So if you didn't list them in your report,
19 you didn't receive them?

20 A I believe I did.

21 Q You believe you did receive transcripts?

22 A I received a huge stack of documents.

23 Q Did you review everything that you received?

24 A I did.

1 Q I'm going to hand you a copy of your report
2 that is dated June 14, 2008. And I'm turning to the
3 fifth page, "Material Reviewed". I hand this to you.
4 Can you show me where in your report you refer to
5 hearing transcripts as being materials that you
6 received in this case?

7 A "Complete investigative file of the
8 independent Police Review Authority/Civilian Office of
9 Police Accountability, with the acronyms thereof,
10 regarding the investigation of the Officer involved
11 shooting on November 8, 2012 by Officer Brandon
12 Ternand."

13 Q So that would have been the investigative
14 file filed by IPRA and COPA prior to filing the charges
15 in this case?

16 A And I think what that would be would be what
17 is indicated as of October 18, 2017 Request for Review
18 Chicago Police Board by COPA's Interim Chief
19 Administrator Patricia Banks.

20 Q And that was a letter that the COPA sent to
21 the Police Board explaining why COPA believed it was
22 appropriate to proceed with the charges in this case?

23 A Yes.

24 Q So that didn't have any transcripts in it,

1 right?

2 A No. It would have been the complete
3 investigative file.

4 Q The complete investigative file which was
5 prepared prior to filing charges in this case?

6 A I believe so.

7 Q An investigative file for before the charges
8 were filed in this case, could not contain the
9 transcript and testimony that was elicited at this
10 hearing, correct?

11 A Possibly, yes.

12 Q There were statements that were provided by
13 the officers in that investigative file, correct?

14 A Yes.

15 Q And you reviewed those?

16 A Yes.

17 Q And there were depositions transcripts that
18 were provided by Officers and witnesses, correct?

19 A Yes.

20 Q And you reviewed those?

21 A Yes.

22 Q But there weren't any transcripts from this
23 hearing, correct?

24 A I don't recall honestly.

1 Q In order for you to reach the opinions that
2 you have expressed today, it is important for you to
3 understand, have an understanding what facts actually
4 occurred, correct?

5 A Yes.

6 Q And in order to make a -- for the Police
7 Board to make a determination of what facts occurred,
8 they would have to review the testimony that was
9 actually elicited?

10 A Yes.

11 Q And do you think it would have been helpful
12 to review the testimony that was actually elicited in
13 this case in order to reach an opinion about what
14 happened?

15 A I was able to review a number of witness
16 accounts. Sherrice Jackson, I believe her name is, who
17 didn't see a whole lot. An individual who was out in a
18 garage who didn't see a whole lot. Of course the video
19 of Mr. Bright running past a camera on a building. But
20 to my knowledge, there is nobody that saw this actual
21 incident occur except for Officer Ternand and
22 Mr. Bright.

23 Q So don't you think it would have been helpful
24 for you in reaching your opinions to actually have

1 reviewed Officer Ternand's testimony that he actually
2 gave in this hearing?

3 A Well, yes.

4 Q And you indicated in your report that you
5 reviewed -- the City called an expert in this case?

6 A Yes.

7 Q Mike Gennoco. And you reviewed Mr. Gennoco's
8 report?

9 A Yes, I did.

10 Q And you disagreed with his analysis at least
11 to a certain extent?

12 A Yes, I do.

13 Q Do you think it would have been helpful to
14 you to actually to have reviewed Mr. Gennaco's
15 testimony from this case in reaching your opinions?

16 A Couldn't have hurt.

17 Q Now you indicated that it is your opinion
18 that Officer Ternand and his colleagues had no choice
19 but to chase Mr. Bright, correct?

20 A Yes.

21 Q Now, that doesn't mean that perhaps some of
22 the tactics or steps that were used during the chase
23 couldn't be reconsidered or --

24 A We can always critique tactics. There are

1 varying thoughts and tactics for both pursuits, you
2 know, and for defensive tactics and firearm tactics.
3 But, excuse me, there is always room for critique in any
4 situation.

5 Q And not necessarily with respect to this
6 particular chase. While the circumstances may
7 necessitate the Officer chasing a suspect, they don't
8 always necessitate that certain steps be taken,
9 correct?

10 A Repeat that again?

11 Q That was a terrible question. Thank you.

12 So circumstances can necessitate
13 officers chasing an expert, right?

14 A Yes.

15 Q But those circumstances don't require the
16 Officer to take the same steps during a chase, right?

17 A The same circumstances. So the same
18 circumstances being he goes into the yards and starts
19 going over fences is going to result in a foot pursuit,
20 I'm certainly not going to chase him through the yards
21 in a car or a bicycle or anything else.

22 Q Let me put it this way. Does circumstances
23 of a particular chase is what dictates what tactics
24 should be used, right?

1 A I'm not 100 sure I'm clear on what you mean by
2 that.

3 Q The tactics that are used on a foot chase
4 through a vacant lot aren't necessarily the same
5 tactics that should be used on a foot chase down the
6 street?

7 A Well, essentially you would have somebody who
8 B-lines right after him. And you are going to have
9 people who are going to flank him and cover his possible
10 moves left to the right or whatever, and hopefully you
11 have got somebody up ahead of him.

12 Q And it is your understanding that is what the
13 officers were trying to do?

14 A Yes.

15 Q And Officer Ternand was chasing the suspect,
16 right?

17 A Yes.

18 Q And Officer Bruno was going to go down the
19 alley that parallels between Prairie and Indiana,
20 right?

21 A Yes.

22 Q And Officer Sledge was going to go down
23 Indiana, correct?

24 A Yes.

1 Q And Officer Razo was going to circle the
2 block and come to the south end, correct?

3 A Yes.

4 Q I think in response to Mr. Thompson's
5 questions, you had indicated that you believed simply
6 by presenting himself in the alley with the gun visible
7 in his hand Dakota Bright had basically committed a
8 Class 4 felony, right?

9 A Yes.

10 Q In your report on the page that starts the
11 heading "Opinion", which I believe is -- they are not
12 numbered, but I think it is the sixth page in the
13 middle of the second paragraph, you indicate that all
14 he, he being Mr. Bright, "All he had to do was stop
15 when told to do so and he would have been taken into
16 custody without incident, but he decided to run. At
17 this point, although Mr. Bright, is not known to have
18 committed a crime, Officers cannot just let him run
19 into a neighborhood with a gun in his hand."

20 Are you mistaken in that report where
21 you indicated at this point Mr. Bright is not known to
22 have committed a crime?

23 A Not known to have committed any other crime.
24 The only crime he committed was that by virtue of his

1 possession of that firearm, which in and of itself is a
2 crime.

3 Q So he was not known to commit any other
4 crime?

5 A Any other crime.

6 Q Now, your understanding is that as he,
7 Officer Ternand, chased Mr. Bright through the
8 backyards, he climbed over a one foot fence?

9 A Right.

10 Q Are you not critical of that tactic by
11 Officer Ternand, correct?

12 A No.

13 Q But you would agree that by climbing that
14 fence he put himself in a more vulnerable position?

15 A Unfortunately we do.

16 Q He had to holster his gun, correct?

17 A Yes.

18 Q And he had to climb over the fence?

19 A Yes.

20 Q And while climbing over the fence he was
21 limited in defending himself?

22 A Likely.

23 Q So he did put himself in a more vulnerable
24 position?

1 A He has no choice.

2 Q Well, we always have a choice, right?

3 A No.

4 Q You indicated, I think, on direct you said
5 that at one point Mr. Bright probably determined that
6 the flight was failing. Do you remember saying that?

7 A Could have.

8 Q As Bright was running through the backyards
9 and Ternand was following him, in fact Bright was
10 gaining ground on Ternand, wasn't he?

11 A I believe he was.

12 Q And yet you determined that the flight was
13 failing?

14 A I do, because Officer Ternand wasn't the only
15 one chasing him.

16 Q Do you know where Officer Bruno was at the
17 time that Mr. Bright was shot?

18 A I believe he was parallel.

19 Q Do you know where in the alley north, south
20 relative to Mr. Bright?

21 A I'm not specifically looking at the
22 documentation.

23 Q Do you know where Officer Sledge was in
24 connection north, south of Mr. Bright?

1 A Not specifically.

2 Q Do you know if Bright was gaining ground on
3 him as well as he was on Ternand?

4 A He was likely closing with them.

5 Q Closing with them. They are all running
6 south, correct?

7 A Yes.

8 Q So Bright wouldn't be closing on Bruno and
9 Sledge if they are all running south, would he?

10 A They may have just been ahead of him.

11 Q You don't know where they were?

12 A Not 100 percent, no.

13 Q You don't have any information that is
14 indicated to you where north, south relative to that
15 parallel alley, either Bruno or Sledge was at the time
16 that Mr. Bright was shot, do you?

17 A Not exactly without looking at the
18 documentation.

19 Q Officer Ternand had a radio with him, didn't
20 he?

21 A Yes.

22 Q And he used that radio once, correct?

23 A Yes.

24 Q And when he called out to say that Bright was

1 circling back, he said, "He's coming back to you Gino",
2 right?

3 A Yes.

4 Q He never used the radio again during the
5 chase, did he?

6 A It is very difficult to use a radio while
7 jumping fences.

8 Q Is there any reason that Officer Ternand
9 couldn't stop at that fence and observed Mr. Bright and
10 told his colleagues who you believe was closing in on
11 him where Bright was?

12 A And this is at the time when he fired the
13 shot?

14 Q No. When he came to the four foot fence?

15 A That would be when you would lose him.

16 Q But I thought that you believed that Bruno
17 and Sledge was closing in on Bright?

18 A If you lose sight of him, now nobody knows
19 where he is at. So you've got to keep an eyeball on
20 him.

21 Q You can keep an eyeball on him because they
22 were chain link fences between Ternand and Bright,
23 correct?

24 A Who is to say that he is going to stay in that

1 straight line. He could take any one of those gangways
2 and what have you.

3 Q And that's why Officer Bruno is in the alley
4 and Officer Sledge is on the street, right?

5 A Exactly.

6 Q And if he took any of those gangways, he
7 would call out and say, "He's coming to you, Gino"?

8 A Yes.

9 Q But he never used his radio again during the
10 chase?

11 A No.

12 Q Now, in this case, Mr. McGee, I believe that
13 the standard that is being applied is the Chicago
14 Police Department's Journal order that was in place
15 regarding the Use of Force?

16 A Yes, sir.

17 Q You reviewed that in preparing this?

18 A Yes.

19 Q And that Use of Force policy states what are
20 the circumstances in which an officer is justified in
21 using deadly force, right?

22 A Yes.

23 Q And one of those circumstances is if the
24 Officer reasonably believes it is necessary to prevent

1 death or great bodily harm to an officer or another
2 person?

3 A Yes.

4 Q And is that the prong of the Use of Force
5 standard that you believe applies in this case?

6 A Yes.

7 Q And in this case you believe it was
8 appropriate for Officer Ternand to use deadly force
9 because he reasonably believed that he, himself, was
10 threaten with great bodily harm?

11 A Yes.

12 Q Not because somebody else might be threaten
13 with bodily harm?

14 A Anyone involved in the pursuit or anyone else
15 who for that matter who may be in the area.

16 Q Are you aware of anybody else that was in the
17 backyards at the time that Dakota was shot?

18 A No, I am not.

19 Q Now, the fact that the Officer's reasonably
20 believed that Dakota Bright was armed, that fact alone
21 was not enough to justify using deadly force against
22 him, right?

23 A No.

24 Q And the fact that Dakota Bright was fleeing

1 was not enough to justify using deadly force, correct?

2 A Correct.

3 Q And the fact that Dakota Bright was fleeing
4 and reasonably believed to be armed is not enough to
5 use deadly force?

6 A Correct.

7 Q In fact, Dakota Bright had to do something to
8 put Officer Ternand in reasonable belief that he was
9 being threatened for him to be able to use deadly
10 force, correct?

11 A Yes.

12 Q Now in this case, you talked a little bit
13 about Graham vs. Conner. Reasonable mean objective,
14 right?

15 A Yes.

16 Q The question isn't what did Officer Ternand
17 personally subjectively believe. It is what would a
18 reasonable person in that position believe?

19 A Yes.

20 Q Now, it is my understanding that your opinion
21 that Officer Ternand was justified is based on Officer
22 Ternand's testimony that he believed that Dakota Bright
23 was turning towards him and simultaneously reaching
24 where he believed the gun was?

1 A Yes.

2 Q And turning towards Officer Ternand wouldn't
3 be enough to justify the use of deadly force, would it?

4 A If he is just looking behind him to see where
5 he is at, no.

6 Q In fact we know it is not because that
7 happened on a number of occasions during the chase,
8 didn't it?

9 A Yes.

10 Q When Dakota Bright climbed over the six-foot
11 fence, got up and looked back towards Officer Ternand
12 and adjusted his pants and kept running, that didn't
13 put Officer Ternand in a reasonable threat, did it?

14 A Apparently the two didn't come together.

15 Q So it was important that in this instance
16 both events happened. Dakota Bright was turning back
17 towards Officer Ternand in a manner that looked like he
18 may be confronting him and simultaneously reaching to
19 where his weapon was believed to be, right?

20 A Yes.

21 Q As he was turning back towards to face
22 Officer Ternand that Officer Ternand fired his weapon?

23 A Yes.

24 Q And you indicated that somebody in Officer

1 Ternand's position has been trained and fired his
2 weapon thousands of times, so he could fire that weapon
3 almost reflectively?

4 A Yes.

5 Q And so the instant for Mr. Bright turning
6 towards Officer Ternand and the time that Officer
7 Ternand fired was less than a second?

8 A I don't know that exactly.

9 Q If that is what Officer Ternand testified to,
10 does that sound reasonable to you?

11 A It could very well be.

12 Q Because of the reflective nature of someone
13 trained to do this type of work?

14 A It could very well be that it was less than a
15 second.

16 Q Are you aware that Officer Ternand used his
17 gun site when he fired his weapon?

18 A We are trained to place the weapon in our
19 hands in a particular fashion, which brings the sites
20 into play immediately. This is taught to our officers
21 nationwide and of course it becomes instinctive. I
22 can't tell you how many hours we spend on establishing
23 grip. It would bore the heck out of most people to go
24 into how everything we talk about, all the subtle

1 nuances, pistol grip and what have you, and stance and
2 everything else. But, yes, it involved a process that
3 becomes instinctive.

4 Q Would you agree if Dakota Bright was facing
5 away from Officer Ternand at that point he wouldn't
6 have presented a reasonable threat of imminent boldly
7 harm?

8 A I don't know where he was facing initially.
9 He stated -- said that he was facing the Officer and
10 motioning towards his waistband, which was the last
11 place that the weapon was seen. And we move back and
12 forth in those moments of altercation. His head could
13 have been turned around instantly. We can turn our
14 heads very quickly.

15 Q Would you agree with me that if Dakota Bright
16 was facing away from Officer Ternand, he wouldn't
17 present Officer Ternand with a threat of bodily harm?

18 A He may have been facing away from him at the
19 very moment, that obviously he was at the moment the
20 bullet hit him.

21 HEARING OFFICER WOOD: You are not answering
22 the question. You are giving a narrative. Could you
23 restate the question and could you please answer it?

24 THE WITNESS: Could you read it back?

1 BY MR. FIEWEGER:

2 Q You would agree if Officer Dakota Bright was
3 facing away from Officer Ternand, he would not present
4 Officer Ternand with an imminent threat of great bodily
5 harm?

6 A I can't agree.

7 Q I'm sorry?

8 A I can't agree with you.

9 Q So when Dakota Bright was running away from
10 Officer Ternand, he did not present a threat of
11 imminent threat of great bodily harm, correct?

12 A No, not at that moment, no.

13 Q So if he was facing away from him, he wasn't
14 facing him at all and there was no weapon evident or
15 apparent, would you agree with me that he did not
16 present a threat of -- imminent threat of great bodily
17 harm?

18 A But a reasonable person would believe that a
19 weapon is apparent because he saw him place it there.

20 Q I understand that. My question is, if Dakota
21 Bright is facing away from Officer Ternand and his
22 weapon is not apparent, would you agree with me that he
23 doesn't present an imminent threat of great bodily
24 harm?

1 A If he goes for the weapon and at the moment he
2 turns away, he can turn back at him and firing at him
3 faster than he can react to incapacitate him.

4 Q My question is sir, if Dakota Bright is
5 facing away from Officer Ternand and his weapon is not
6 apparent, would you agree that he does not present
7 imminent great bodily harm?

8 A I'm going to ask you, what do you mean by not
9 apparent?

10 Q It is not visible.

11 A It is not visible, but it's --

12 HEARING OFFICER WOOD: It's a yes or no.

13 MR. GRACE: Objection. He answered the
14 question three times.

15 HEARING OFFICER WOOD: He has not answered
16 the question.

17 MR. GRACE: He says he disagrees with him.

18 HEARING OFFICER WOOD: He has not answered
19 the question. He's provided narrative responses that
20 were not responsive to the question. It's a yes or no.
21 Would you agree with me, yes or no?

22 THE WITNESS: Ask it again.

23 BY MR. FIEWEGER:

24 Q Would you agree with me, if Dakota Bright is

1 facing away from Officer Ternand and his weapon was not
2 apparent, he did not present an imminent threat of
3 great bodily harm.

4 A I can't agree with that.

5 HEARING OFFICER WOOD: Then answer no. He
6 has asked the question three times and you have not yet
7 said "yes" or "no". Either you agree with the
8 statement or you don't.

9 A I don't agree with the statement. It's not
10 clear.

11 MR. FIEWEGER: You don't have to agree with
12 me. This is all I have.

13 MR. THOMPSON: Can we take five minutes?

14 (BRIEF RECESS)

15 HEARING OFFICER WOOD: Yes, you may ask it.

16 MR. GRACE: No objection, Judge.

17 BY MR. FIEWEGER:

18 Q One more question. I should have asked it
19 before the break. During the 15 hours that you spent
20 working on this case, did you ever visit the scene of
21 the chase?

22 A No, I did not.

23

24

1 MR. GRACE: Judge, we have a couple of
2 questions. It will be short.

3 REDIRECT EXAMINATION

4 BY MR. GRACE:

5 Q Counsel asked you a lot of questions about
6 this Berke case that you testified to back in 2010. Do
7 you remember that line of questioning? That was a 1983
8 action filed in Federal Court, correct?

9 A I believe.

10 Q That was where the Plaintiff claims that the
11 Officer used excessive force and was trying to get
12 money?

13 A Yes.

14 Q They claimed that somehow the officers of the
15 Oak Lawn Police Department had violated their civil
16 rights, is that correct?

17 A Yes.

18 Q That was not a disciplinary case like we are
19 here with Officer Ternand, correct?

20 A No.

21 Q And the City of Oak Lawn offered you for
22 three opinions, that the Officer did not use excessive
23 force, that the injuries depicted in the photographs
24 were consistent with scraping against pavement and that

1 in his experience a Police Officer would not have
2 ignored any -- to look into the welfare of a
3 82-year-old woman. So they offered you three reasons,
4 is that correct?

5 A Yes.

6 Q And Judge Kindle actually ruled that you
7 could testify with respect to the second two, but she
8 was going to bar you from testifying with respect to
9 the first opinion, is that right?

10 A Yes.

11 Q And it is true that she didn't -- Judge
12 Kindle didn't say that were you unqualified. She ruled
13 that your testimony regarding police procedures would
14 be immaterial and actually would be prejudicial and not
15 probative, is that correct?

16 A That sounds about right.

17 Q So in the 20 years -- you said -- how many
18 times have you been asked to testify?

19 A Twenty-six.

20 Q This is the 26th, right?

21 A Yes, sir.

22 Q In the 25 times that you have been offered as
23 an expert, have you ever been found "not qualified" as
24 a Use of Force expert that you are aware of?

1 A No.

2 Q Your testimony has been barred in specific
3 cases based on reasons that have nothing to do with
4 your qualifications?

5 A Yes.

6 Q And that is what her Honor did in federal
7 court on the Berke vs. Calhane case?

8 A Yes.

9 Q I'll move on. Now, also Counsel asked you a
10 number of questions about the Village of Cicero, your
11 employer, is that correct?

12 A Town of Cicero.

13 Q Town of Cicero. Are you aware of any
14 disciplining actions that have been taken against you
15 or contemplated with respect to your offering expert
16 opinion testimony?

17 A No.

18 Q And if you were aware that you were not
19 allowed to testify as an expert opinion for villages or
20 against villages, would you continue to testify?

21 A I wouldn't be able to.

22 Q I want to get something clear. You said that
23 you have been a police Officer for what, 41 years?

24 A Yes, sir.

1 Q Now Concealed Carry is a new thing in
2 Illinois, is that right?

3 A Yes.

4 Q It wasn't until 2012 when the Federal Court
5 in the case of Illinois v. Aguilar mandated that the
6 State of Illinois craft the Concealed Carry Law,
7 correct?

8 A Yes.

9 Q And at the time of this incident, there was
10 no Concealed Carry Law in Illinois, correct?

11 A Yes.

12 Q In fact, it was illegal to walk around with a
13 gun either concealed or not concealed, is that correct?

14 A Yes.

15 Q And it was a Class 4 Felony?

16 A Yes.

17 MR. FIEWEGER: Objection. Asked and
18 answered.

19 MR. GRACE: Class 4 Felony?

20 HEARING OFFICER WOOD: He's already testified
21 to that.

22 BY MR. GRACE:

23 Q Now, a couple more questions. He asked --
24 Counsel asked you about -- oh, he offered a -- looks

1 like an article from the Chicago Sun-Times of 2013
2 where it talks -- this article speaks about
3 administrative changes going on in the Cicero Police
4 Department?

5 A Yes.

6 Q And it appears, according to the article from
7 the Chicago Sun-Times, whatever that's worth, you were
8 demoted from First Deputy Superintendent to Command in
9 Charge of Training, correct?

10 A Yes.

11 Q And you actually -- there was no pay cut,
12 correct?

13 A Correct.

14 Q Was the basis of this demotion disciplinary
15 based?

16 A No.

17 Q Now the City has suggested during
18 cross-examination that when an individual was seen
19 walking into an alley with a gun in his hand that a
20 foot chase would be an inappropriate reaction to that?

21 MR. FIEWEGER: Objection. Mischaracterizes
22 our position.

23 MR. GRACE: I'll take that back.

24 HEARING OFFICER WOOD: Sustained.

1 BY MR. GRACE:

2 Q The City of Chicago has offered an expert
3 witness with all kinds of credentials who took the
4 stand and testified that a foot chase was inappropriate
5 in this case?

6 MR. FIEWEGER: Objection. That
7 mischaracterizes the testimony.

8 MR. GRACE: I asked him that question, Judge,
9 and he said they should not have done a foot chase.
10 They should have stayed back he said.

11 HEARING OFFICER WOOD: Well, there is a
12 couple of problems. It is a mischaracterization. And
13 it goes beyond cross-examination. Where are you going
14 with this?

15 MR. GRACE: He just -- the City just asked
16 him a number of questions about the chase and how they
17 followed him and a lack of communication.

18 HEARING OFFICER WOOD: You preferenced it
19 with what their expert said. You are not
20 characterizing what their expert said correctly.

21 BY MR. GRACE:

22 Q Do you think it was inappropriate to engage
23 in a foot chase when Dakota Bright walked into that
24 alley with a handgun in his hand?

1 A No, it was not appropriate.

2 HEARING OFFICER WOOD: I would ask,

3 Mr. Witness, please speak up. I can hardly hear you.

4 THE WITNESS: I'm sorry.

5 HEARING OFFICER WOOD: You have to speak up.

6 I'm the closest person to you and I can't hear you.

7 BY MR. GRACE:

8 Q Now, Counsel asked you a number of questions
9 about Graham v. Connor, correct?

10 A Yes, sir.

11 Q And he asked you a number of questions about
12 whether or not certain things that were done by Dakota
13 Bright would justify use of force, is that correct?

14 A Yes.

15 Q Graham vs. Connor looks at the totality of
16 the circumstances, is that correct?

17 A Yes, sir.

18 Q Now, when we look at what Dakota Bright did,
19 you would agree that flight alone was not enough for
20 deadly force?

21 A Yes.

22 Q And would you agree seeing him with a gun in
23 the alley was not enough for the use of deadly force?

24 A Not when he's -- not at that moment as it was

1 displayed, no.

2 Q Okay. And the fact that you merely saw
3 someone running, someone running with holding their
4 left side, that alone is not good enough for you to use
5 deadly force, right?

6 A Correct.

7 Q And the fact of ignoring verbal commands,
8 that alone is not enough for the use of deadly force?

9 A Correct.

10 Q And the fact that when he hit the last fence
11 and stopped and changed his demeanor, that alone is not
12 enough for the use of deadly force, correct?

13 A Correct.

14 Q And the fact that he -- when he hit that last
15 fence, he reached over to his left hand side, that
16 alone is not enough for the use of deadly force,
17 correct?

18 A Correct.

19 Q When you take all of those factors that I
20 have given you and many other factors as I'm sure you
21 are aware of as you reviewed the report and you put
22 them all together, do you believe that the actions of
23 Brandon Ternand, based on all those factors, was enough
24 for the use of deadly force?

1 A Yes. When the individual winds up reaching
2 for that weapon and looks to index his target, yes.

3 Q Counsel asked you questions about the fact
4 that only one radio communication was done. Do you
5 remember that question?

6 A Yes.

7 Q And how long were you able to estimate the
8 time of his entire pursuit?

9 A This pursuit was probably less than a minute.

10 Q And would you find it unusual, based on your
11 experience, that the Officer would only go on the radio
12 one time for a less than a minute pursuit?

13 A No.

14 Q And there was communication between Officer
15 Ternand and his partners, correct?

16 A Not on the radio. Besides the radio, they
17 were communicating verbally without the radio.

18 Q And they were also -- obviously as a Police
19 Officer you worked patrol before?

20 A Absolutely.

21 Q And when you hear an Officer running, yelling
22 "Stop, please stop the gun", that means certain things
23 to other officers?

24 A Yes.

1 Q So he asked you -- Counsel asked you
2 questions about tasers on a case that you testified to.
3 I think it was Haley v. Smith out of Sangamon County?

4 A Yes, sir.

5 Q And your conclusion about whether or not the
6 manufacturer says you shouldn't tase somebody who is
7 having a medical incident. You said it was irrelevant,
8 correct?

9 A No. I said I was unaware that they had issued
10 something prohibiting that. But tasers basically has
11 everybody, every department formulate their own policy
12 regarding the use, kind of washing their hands of it, if
13 you will. But equipment is something that is utilized
14 by CIT personnel against individuals experiencing
15 excited delirium and any other issues on the street,
16 because it gets it done quick without a struggle and
17 therefore doesn't get their heart rate up like other
18 methods might.

19 Q When we are dealing with the world of use of
20 force, it's what the officer knew at the time, is that
21 correct?

22 A Yes, sir.

23 Q And whether or not the officer knew -- if the
24 officer didn't know that someone was suffering from an

1 epileptic seizure, that is kind of irrelevant?

2 A Yes.

3 Q Whether or not to use use of force, right?

4 **A** **Yes.**

5 MR. GRACE: Judge, I think I'm done.

6 HEARING OFFICER WOOD: Any redirect?

8 BY MR. FIEWEGER:

9 Q One issue quickly in response to Counsel's
10 question.

11 You indicated you were demoted in 2013.

12 It wasn't as a result of discipline, correct?

13 A I had way too many duties. I was not only --

14 HEARING OFFICER

15 Just answer the

16 BY MR. FIEWEGER:

17 Q It was an administrative decision that was
18 made by the department that it was better to use you in
19 this role than whatever role you were in before?

20 A Training yes

22 A No.

23 Q But at any rate, you are no longer the First
24 Superintendent?

1 A First Deputy Superintendent.

2 Q First Deputy Superintendent of the Cicero
3 Police Department?

4 A Yes.

5 Q We hand you your CV or resume, which was
6 produced to us with your report. Take a look at that.
7 It says "2009 to Present, First Deputy Superintendent",
8 correct?

9 A No. What it says is "First Deputy
10 Superintendent Police Commander Training Division and
11 Range Master."

12 Q So it says all of that under the heading
13 "2009 to Present", correct?

14 A Right.

15 Q So somebody who is reading that could
16 probably get the misimpression that you are currently
17 the First Deputy Superintendent, correct?

18 A No. I'm hoping that they wouldn't.

19 Q Maybe you will want to change your resume
20 after this, correct?

21 A One second. If you look at the second --

22 HEARING OFFICER WOOD: No. You need to wait
23 for the question.

24

1 BY MR. FIEWEGER:

2 Q Is there something that you want to clarify?

3 HEARING OFFICER WOOD: Okay.

4 THE WITNESS: It says, "Cook County Sheriff
5 Police Department, April 1977 to December of 2008." I
6 listed all of those positions as well, okay. You know,
7 it is just the format in which I did it. No
8 misrepresentation.

9 BY MR. FIEWEGER:

10 Q It would be much more clear if you indicated
11 the dates that you were actually First Superintendent
12 of Police. So as reading this I could tell today, the
13 present, you are not First Deputy Superintendent of
14 Police?

15 A I could very well take that under advisement
16 and do that.

17 MR. FIEWEGER: Thanks.

18 HEARING OFFICER WOOD: Anything else?

19 MR. THOMPSON: Nothing.

20 HEARING OFFICER WOOD: Un-mic yourself and
21 step down.

22 THE WITNESS: Yes, ma'am.

23 HEARING OFFICER WOOD: Are the parties
24 prepared to proceed with closing arguments? Do you

1 want to take a break before closing or you just want to
2 go forward?

3 MR. FIEWEGER: It looks like we are going to
4 have to.

5 HEARING OFFICER WOOD: You are having
6 technical malfunctions?

7 MR. FIEWEGER: Let's take a break.

8 HEARING OFFICER WOOD: Let's take a
9 ten-minute break for technical challenges.

10 (BRIEF RECESS)

11 HEARING OFFICER WOOD: Are the parties ready?

12 MR. FIEWEGER: Yes.

13 HEARING OFFICER WOOD: You may proceed.

14 CLOSING ARGUMENT

15 MR. FIEWEGER: Over the last few days of this
16 hearing, we heard compelling testimony about the event
17 that took place on November 8, 2012. We've heard the
18 testimony of Officer Ternand and his colleagues
19 regarding a harrowing chase, foot chase through the
20 neighborhood on the south side of Chicago. We've heard
21 about a suspect who is reasonably believed to have been
22 carrying a weapon throughout the chase. And we heard
23 about the tragic ending of that chase. And based on
24 the descriptions offered by the officers, and I suspect

1 the argument that we're going to be hearing from
2 Counsel, they want to paint this as a heroic event.
3 Unfortunately, what we know is what they have described
4 isn't really what happened. How do we know that? We
5 know that because we have Exhibit Number 7, which is
6 the Postmortem Report of the Medical Examiner of Cook
7 County that reached the conclusion that the back --
8 this is on Page 22 of the report. On the back of the
9 head, five and a half inches beneath the top of the
10 head in the midline, there is an oval gunshot wound of
11 entrance.

12 Further down in that paragraph we find
13 "Finally a copper jacket fragment and two bullet
14 fragments recovered from the brain and the head. The
15 wound coursed from back to front." What we know based
16 on this indisputable concrete evidence is Dakota Bright
17 was facing away from Officer Ternand when he was shot.
18 He wasn't turning towards him and threatening him with
19 a gun that he didn't have. He was facing away. If he
20 was facing away, he wasn't putting Officer Ternand in a
21 reasonable imminent threat, a reasonable belief he was
22 an imminent threat.

23 Officer Ternand has been accused in this
24 case of using deadly force without justification, a

1 violation of Rules 2, 6 and 38, and with unlawfully
2 using and displaying his weapon in violation of Rules 2
3 and 38.

4 What this case is really about, your
5 Honor, is whether or not Officer Ternand complied with
6 the General Order regarding the Use of Deadly Force by
7 Chicago Police Officers, which at the time of the
8 events was General Order 03-0203. And in short that
9 order allowed that an Officer was authorized to use
10 deadly force only when necessary to prevent death or
11 great bodily harm to sworn members or another person.

12 There is another prong to the General
13 Order. But as we heard from Officer Ternand's expert,
14 Mr. McGee, they don't contend that the second prong
15 applies. So the question is whether or not Officer
16 Ternand in this case reasonably believed that using
17 deadly force was necessary to prevent death or great
18 bodily harm to him or another person.

19 We believe that Officer Ternand's
20 asserted justification, as far as belief that Dakota
21 Bright presented a reasonable risk of death or great
22 bodily harm is not warranted.

23 Remember under Graham v. Conner and the
24 standards that are applied in this case, whether or not

1 that belief was reasonable is an objective question.
2 It is enough for Officer Ternand to subjectively
3 believe that he was being threaten with great bodily
4 harm. It has to be objectively reasonable for a person
5 in the same circumstances to reach that conclusion. In
6 reaching that conclusion, you have to apply the
7 totality of the circumstances. And only if the
8 totality of the circumstances show that the use of
9 force was reasonable is it permitted. Here there is
10 actually not a lot of dispute about the events
11 immediately leading up to the shooting.

12 Officer Razo and Officer Ternand
13 responded to a burglary call and then they were
14 accompanied by Officer Sledge and Officer Bruno. They
15 quickly determined the call wasn't bona fide and closed
16 the call. They began to move westerly in the alley
17 that is south of Marquette as they were on their way
18 back to the station. As they were approaching Indiana,
19 when their car was roughly 100 feet short of the
20 intersection, Officer Razo and Officer Ternand saw
21 Dakota Bright step into the alley wearing a red hoodie
22 and red shoes, which they testified are the clothes
23 that indicated to them that he was likely a member of
24 the local street gang.

1 They also saw in his right hand for a
2 brief second what appeared to be a gun. It also
3 appeared that Dakota Bright recognized the officers as
4 they were coming through the alley, as he immediately
5 ran north up Indiana towards Marquette. As he ran
6 north on Indiana for a brief time, he was blocked from
7 view from the officers. During this time that he was
8 blocked from view, we now know that Dakota Bright
9 apparently ditched his gun and left it in the yard
10 along Indiana. Not aware of that, the officers
11 continued their pursuit of him. As he was running,
12 Dakota Bright was holding up his pants using his left
13 hand. The officers took that as an indication that he
14 may have had his gun there and was holding the gun as
15 he ran. But if you take a look at the pictures that I
16 have included in Exhibit Number 3, those pictures also
17 show that Dakota Bright was wearing his pants low on
18 his hip as somewhat of the fashion in the neighborhood.
19 As a result, he was likely just running holding his
20 pants in order to keep them from falling down.

21 Bright runs north on Indiana and Razo
22 and Ternand lose sight from him again. Bright runs
23 north on Indiana and makes it to Marquette. He turns
24 right and they lose sight for a brief second. Again,

1 they are pursuing in their car and they turn right onto
2 Marquette and continue the chase. When they get to the
3 fourth lot east of Indiana along Marquette, Bright
4 comes to a vacant lot and alters his path and he turns
5 south. At this point, Officer Ternand gets on his
6 radio and calls out, "He's coming back to you, Gino",
7 So Officer Sledge and Bruno would know that Bright is
8 heading back towards them. That is the last radio call
9 during this chase. There is no other updates by
10 anybody's location or positions. There is no effort to
11 tell anybody where Dakota Bright is throughout the rest
12 of the chase.

13 As Dakota Bright ran south through the
14 vacant lot on Marquette, he came to the alley that he
15 originally identified the officers. He crossed the
16 alley and continued to run south through the backyards
17 along South Indiana Street. In doing so, he was
18 jumping over fences. In fact he jumped over a total of
19 four fences as he fled from Officer Ternand. Officer
20 Ternand followed and scaled or jumped over one fence
21 during his chase.

22 As you heard from our expert, Mike
23 Gennaco, he was very critical of Officer Ternand
24 jumping over a fence. Why? Because he put himself in

1 unnecessary danger in doing so. It is not appropriate
2 for an officer to take actions that puts himself or
3 others in danger.

4 They continued the chase. And according
5 to Officer Ternand, as Dakota Bright climbed over the
6 fence in the backyard of 6727 South Indiana, he
7 stumbled and hesitated for a second. At that point,
8 Officer Ternand was still running through the second
9 lot immediately south of the alley. At this point,
10 Dakota Bright was gaining distance on Officer Ternand.
11 How do we know that? Because Officer Ternand testified
12 that when Dakota Bright went over the six-foot fence
13 himself, a fence that Officer Ternand came to and
14 actually never scaled, he was within about 30 to
15 40 feet. By the time Officer Ternand shot Dakota
16 Bright, they were over 50 feet apart. So Dakota Bright
17 had put between 10 and 20 feet more distance between
18 himself and Officer Ternand at the time he was shot.
19 His flight was being successful. He was getting away.

20 Officer Ternand has testified that he
21 perceived Dakota Bright to turn towards him in a
22 threatening manner. And Officer Ternand's expert
23 wholly credits that testimony. As you heard, our
24 expert Mr. Gennaco does not wholly credit that

1 testimony. He believes that you have to look at the
2 circumstances and make your own independent conclusion
3 as to whether or not that perception was accurate or
4 reasonable.

5 We believe that based on the
6 circumstances, we don't believe that that perception
7 was accurate or reasonable. Why? First look at it
8 from Dakota Bright's perspective. Why in the world
9 would Dakota Bright who knows he has ditched his gun
10 and was now unarmed, why in the world would Dakota
11 Bright stop and turn to confront the armed police
12 officer who is chasing him? It doesn't make any sense.
13 As we said, he had been gaining ground already. He
14 could just continue his flight.

15 But it is also not consistent with the
16 physical evidence. Why is it not consistent with the
17 physical evidence? Remember what Officer Ternand
18 testified to. He testified that he hesitated and he
19 seemed to change his demeanor somehow. He went towards
20 his waistband with his hand and at the same time turned
21 to face Officer Ternand. So as he is in the process of
22 turning to face Officer Ternand's, it's Officer
23 Ternand's testimony that he fired. How in the world
24 Dakota Bright in the process of turning towards the

1 north could the bullet enter the midline of the back of
2 his head. It could only enter the midline of the back
3 of his head if he is facing away. He can't be
4 turning -- in the process of turning back because he
5 doesn't present the back of his head to Officer
6 Ternand.

7 You heard Mr. McGee testify well, it was
8 possible that he could turn his head back the other way
9 in a second or he could do any kind of movement during
10 this chase. I guess that's all possible. But that's
11 not the testimony. The testimony is as he was in the
12 process of turning, Officer Ternand fired his weapon.
13 And it's only -- and it is necessary to their case
14 because it is only if he's turning toward Officer
15 Ternand does he present the threat of imminent deadly
16 harm. If he's continuing to face away, he doesn't
17 present that. We know from the undisputed medical
18 evidence that he was facing away.

19 And keep in mind as Officer Ternand
20 described this, it all happened instantly. It was less
21 than a second from the time that he perceived
22 Mr. Bright to be turning towards him that he actually
23 fired his weapon. There is no time for Bright to turn
24 his head back if he's actually in the process of

1 turning towards Officer Ternand when he fires his
2 weapon.

3 A fleeing 15-year-old boy, who is not
4 displaying a weapon and looking the other way, doesn't
5 create a reasonable feeling of imminent great bodily
6 harm or death.

7 Now we also heard a great deal from --
8 we heard a bit from both experts in this case. You
9 heard a great deal from Mr. Gennaco who I will submit
10 offered experience and reasonable testimony based on
11 the circumstances here. And the one thing to also look
12 at about Mr. Gennaco's testimony is why didn't
13 Officer Ternand even consider stepping aside behind the
14 probably three or four-foot wide tree that was within
15 one or two feet from him rather than taking a shot at
16 somebody who isn't even displaying a weapon. There is
17 alternatives to taking a shot in these circumstances.
18 Alternatives have to be considered when assessing the
19 reasonableness of the conduct.

20 Your Honor, I fully admit I think this
21 is an extremely difficult case for everybody involved.
22 I think there is a boy who is dead. It's a horrible
23 burden for his family, for his community and for
24 Officer Ternand. You heard Officer Ternand tell you he

1 wouldn't wish that burden on anybody. I believe his
2 sincerity in that regard. We ask Officer Ternand and
3 his colleagues to do a terribly difficult job. They
4 are asked to risk their lives and safety often without
5 thanks and recognition. They are asked to do a
6 terribly important job, a job that could help hold our
7 communities together and help tear them apart. We know
8 that all too well in Chicago based on the events over
9 the last few years, the interactions between our Police
10 Department and community. That is why when there is a
11 mistake made it is important that we hold the person
12 who makes that mistake accountable.

13 Unfortunately, I believe based on the
14 physical evidence of this case, that Officer Ternand
15 made a mistake. And unfortunately I believe in this
16 case we need to hold him accountable. Thank you.

17 HEARING OFFICER WOOD: Counsel?

18 CLOSING ARGUMENT

19 MR. THOMPSON: May it please the Board and
20 may it please you Madame Hearing Officer and Counsels
21 for the City of Chicago, Officer Brandon Ternand is the
22 only witness to testify regarding the shooting of
23 Dakota Bright. So it is incumbent upon all of us to
24 critically analyze and understand Officer Brandon

1 Ternand as a person and as a Chicago Police Officer.

2 And that's an important place to begin.

3 Officer Ternand has served the Chicago
4 Police Department and the citizens of Chicago with a
5 standard of excellence. His sound character, his
6 honesty, his forthrightness, his dedication, his
7 discipline, his compassion and leadership has been
8 praised by all.

9 Take for a minute Commander Kevin
10 Johnson, a dedicated experienced supervisor with the
11 Chicago Police Department. A supervisor who has worked
12 for not only the Police Department, but also the FBI,
13 the ATF and the DEA, and without reservation told all
14 of us, the members of the Board, everybody that has
15 been a part of this proceeding, that of the thousands
16 and thousands of officers that he has encountered and
17 that he has supervised over the course of his 25 plus
18 years, Officer Brandon Ternand is one of the top ten
19 officers that he's ever supervised. And Commander
20 Kevin Johnson is willing to state his illustrious
21 career and his reputation on it.

22 We heard from Jason Debner, an FBI
23 agent with the Anti-Terrorist Division. And similarly,
24 he told all of us that Brandon Ternand is the most

1 honest, dedicated, sincere and honest person that he
2 has ever met and he's willing to stake his
3 representation on it. In fact all of the officers that
4 we've heard testify have the same things to say about
5 Brandon Ternand. They echo one another.

6 We also heard about Branden as a person.
7 We heard from Brandon's wife, Wanessa. She gives us
8 another insight to Brandon Ternand as a person. A
9 loving husband, a caring father, a dedicated Officer
10 and a person who goes out of his way to help others.
11 And despite her daily fears and trepidations and the
12 type of work that Officer Ternand does, she knows his
13 love for his police work outweighs his fears. Our
14 analysis in the beginning of Officer Ternand as a
15 person and as an Officer is critical. There wasn't any
16 testimony from anybody, Chicago Police Department,
17 citizens in the Third District or anybody at all who
18 came in here and provided any other testimony other
19 than what I just stated. And that's very important in
20 our analysis.

21 Brandon Ternand did not violate Chicago
22 Police Department's General Order 030203, their Use of
23 Force policy. Brandon Ternand did not bring discredit
24 to the Chicago Police Department. It is actually quite

1 to the contrary of these allegations. From the very
2 top to the very bottom of the Chicago Police Department
3 to include the Mayor of the City of Chicago, Brandon
4 Ternand has done nothing but to bring the highest
5 credit and excellence to the Chicago Police Department.

6 And I agree with Counsel for the City.
7 And to be clear -- and despite what Mr. Gennaco said,
8 the citizens of Chicago are under siege from gun
9 violence and gangs everyday. The law abiding citizens,
10 particularly the good people living in the Third
11 District and the citizens actually living at 67th and
12 Prairie, they are under the greatest siege and danger
13 from gun violence and gangs. They are afraid to leave
14 their homes at night. Terrified of what danger lurks
15 in the alleys and the gangways and shadows near their
16 homes, whether walking home from school, riding the bus
17 or just playing in the park. They hear the gunfire.
18 They see the crime tape. They know a friend or a loved
19 one that has been affected by gun violence and gangs.
20 In fact the citizens at 67th and Prairie in the Third
21 District, they don't actually need to see the gang
22 member or hear the gunfire. They are scared all the
23 time because the danger is always present.

24 Now, the citizens of Chicago, they are

1 counting on the Chicago Police Department to protect
2 then and provide them safety from these horrible
3 circumstances, gangs, guns, violent crimes. The
4 citizens of 67th and Indiana, the Third District, they
5 are relying on the police officers in the Third
6 District for their safety. And the Chicago Police
7 Department's Third District is relying on Officer
8 Brandon Ternand and their Tactical Team to confront and
9 apprehend gang members, stop gun violence, recover guns
10 and stop narcotic sales anywhere and everywhere that
11 they encounter it. Every block, every street, every
12 sidewalk, every gangway, every alley and everyday.

13 Specifically the Chicago Police
14 Department train, and we expect and particularly in
15 this case Officer Ternand and his Third District
16 Tactical Team to literally run towards danger, not away
17 from danger, knowing well that we are expecting them,
18 particularly Officer Ternand, to put his life on the
19 line everyday. That is the job and the service that
20 we expect from them. And Officer Ternand proudly,
21 honorably, bravely, and without reservation, answers
22 that call everyday of his career with the highest of
23 excellence.

24 Every death from gun violence is tragic

1 and Dakota Bright's death is no less tragic and it is
2 equally sad. But the decision to engage in gun
3 violence was Dakota Bright's and Dakota Bright's
4 alone. The moment he entered the streets of Chicago in
5 broad daylight and brandishing a gun, the decisions and
6 the bad decisions he made thereafter are his and his
7 alone. And ultimately those actions by Dakota Bright
8 and his bad decisions costed him his life. But it
9 doesn't logically or reasonably or justly follow that
10 Dakota Bright's commission of a felony and bad
11 decisions should cost Officer Brandon Ternand his job.

12 Understanding and applying the correct
13 analysis of the facts in this case is critical. And we
14 all seem to agree that Graham v. Connor sets forth that
15 analysis. We must base our analysis only upon the
16 state of mind of Officer Brandon Ternand on November 8,
17 2012. What Officer Ternand saw, what Officer Ternand
18 believed and the emotions that he was experiencing at
19 the time. It is hard. We know a lot more now than
20 Officer Ternand knew at the time. But we cannot
21 analyze the facts with 20/20 hindsight. And we can't
22 even consider the events through the eyes of Dakota
23 Bright. We cannot analyze the actions of Officer
24 Ternand under 2018 policies, new rules, new General

1 Orders. The law forbids us from doing any of those
2 things. So here on behalf of Officer Brandon Ternand
3 is a summary review of the facts from his eyes on
4 November 8, 2012.

5 Officer Ternand clears an in progress
6 call and returns to patrol. Within seconds, officer
7 Ternand observes Dakota Bright enter the alley wearing
8 his DOD gang colors and displaying a large revolver
9 handgun in his hand directly in front of their
10 approaching vehicle. Regardless of what Dakota Bright
11 intended or thought, what he did in the perspective of
12 Officer Ternand is that he just blasted the loudest and
13 strongest signals to Officer Ternand of those very
14 things that I just mentioned, gun violence, gang
15 violence, the essence of the crime and violence that
16 paralyzes all of us, all the good citizens of Chicago.
17 And it also scares and provides or causes fear in the
18 minds and hearts of the Chicago Police officers that
19 encounter such circumstances. They are human and they
20 are entitled to human emotions.

At that moment Dakota Bright, based upon Officer Ternand's training and experience, sends another equally loud and forceful signal to Officer Ternand that Dakota Bright just used a gun in the

1 commission of a crime or was enroute to commit a crime
2 with the use of that gun. With bravery and dedication
3 Officer Ternand runs forward to that danger, forward to
4 apprehend Dakota Bright and to protect the citizens of
5 Chicago and particularly the citizens of 67th and
6 Indiana and Prairie.

7 Dakota Bright's next decision to not
8 drop the gun, but to run, sends a compounding wild,
9 blastful signal to Officer Ternand that he is not going
10 to voluntarily surrender. That decision increases the
11 fears of Officer Ternand. But despite those fears that
12 Officer Ternand is experiencing, he has been trained,
13 and it is expected by the Chicago Police Department and
14 really all of us, that Officer Ternand is going to
15 pursue and apprehend Dakota Bright the gun-wielding
16 felon.

17 When Officer Ternand observed Dakota
18 Bright fleeing holding his left side, the last place
19 where Officer Ternand sees Dakota Bright tuck the gun,
20 he is sending another signal to Officer Ternand. A
21 clear signal to Officer Ternand that he is still in
22 possession of the handgun. It doesn't matter that
23 Dakota Bright might not be in possession of that
24 firearm. It doesn't matter if he is holding up his

1 pants. It doesn't matter if he's grabbing or holding
2 his cell phone. The only thing that matters is the
3 signal being received by Officer Ternand and that is he
4 still has the gun.

5 Bruno and Sledge experienced officers,
6 hang tight. They don't need to be told to hang tight.
7 And they don't need to tell Officer Ternand and Officer
8 Razo that they are hanging tight. They are hanging
9 tight in the alley because they are going to set the
10 trap for Dakota Bright and Dakota Bright runs right
11 into it.

12 During that pursuit, Officer Ternand
13 advises Sledge and Bruno, particularly Bruno, that
14 Bright is coming back. He does that out of concern for
15 the safety of his fellow officers. And when he
16 encounter's Bruno as an officer of excellence, he
17 tells Bruno that he has a gun. So we know that from
18 the perspective of Officer Ternand, he reasonably
19 believes that Dakota Bright is still in possession of
20 that firearm.

21 But let's be clear about the remaining
22 facts on the ground at this point. Dakota Bright was
23 trapped, just as Bruno and Sledge had anticipated, just
24 as that experienced Tactical Team operates every single

1 day. Dakota Bright had garages to his left. Dakota
2 Bright had houses to his right. Dakota Bright had
3 Officer Bruno parallelling in the alley. Dakota Bright
4 had Officer Sledge parallelling on the street. He had
5 Officer Ternand in hot pursuit and he was running into
6 a dead end. He was trapped. Everybody is scared at
7 this point. Officer Ternand is scared. Dakota Bright
8 is scared. And just as Mr. McGee said, it is flight,
9 fight or freeze. And when he doesn't continue with
10 fleeing and when he doesn't freeze and throw up his
11 hands and say "Don't shoot. I don't have the gun. I
12 don't have a gun. Don't shoot me", putting his hands
13 out where everybody can see him, it is reasonable,
14 another clear signal to Officer Ternand that he
15 believes Dakota Bright is going to fight and he is
16 going to use the weapon that Officer Ternand reasonably
17 believes he still has.

18 We've almost reached the breaking point,
19 the fear of Officer Ternand and perhaps even the fear
20 of Dakota Bright. The final signal that Dakota Bright
21 sends to Officer Ternand is the fatal signal. It is
22 when he reaches with his right hand to the left side of
23 his body where Officer Ternand last observed it and he
24 turns in the direction of Officer Ternand. It is only

1 important what Officer Ternand believes. He reasonably
2 believed, based upon the totality of the circumstances,
3 the facts and his experience, that Dakota Bright is
4 going for the gun. And that is objectively reasonable
5 from Officer Ternand's perspective and from anyone
6 else's perspective.

7 Madame Hearing Officer, it doesn't
8 matter if Dakota Bright was reaching to the left side
9 for his cell phone that he just dropped moments,
10 seconds earlier and he was turning to see where he
11 dropped his phone. It doesn't matter if Dakota Bright
12 was reaching to the left side of his body to where he
13 had injured his hand and injured his left leg and he
14 was turning to see how far Officer Ternand was behind
15 him. It doesn't matter, regardless of any combination
16 of facts what Dakota Bright was doing. It only matters
17 from the perspective of Officer Ternand what he
18 believed and he believed that that gun was going to be
19 used and he was in fear for his life.

20 It is tragic. The whole thing is
21 tragic. It haunts all of us as we sit here today. We
22 can feel it. We want to ask Dakota Bright, "Why? Why?
23 Why? Didn't you understand the signals that you were
24 sending to Officer Ternand? Why didn't you stop? Why

1 didn't you throw your hands up?" It is tragic. But
2 nobody is more haunted by Dakota Bright's action than
3 Officer Ternand. And I think when you travel down the
4 block that Officer Ternand lives on in the middle of
5 the night that all the lights are off in all the houses
6 except for one. And in that house that's lit is
7 Officer Ternand, his cup of coffee, wondering to
8 himself why Dakota Bright? Why, why, why did you do
9 the things that you did? And Officer Ternand and
10 Dakota Bright, they are not forever entwined. But our
11 deepest sense of tragedy and our sorrow and our desire
12 for unanswerable questions does not outweigh or negate
13 Dakota Bright's actions and it doesn't change the
14 perspective that Officer Ternand had at the time that
15 he discharged his firearm.

16 Officer Ternand's fear for his own life
17 and his right to defend himself by firing one shot to
18 stop the threat posed to his life. And that one shot
19 within the distant that he was trained to fire, closer
20 than a picture to a batter, that was no more than
21 punching out and leveling his gun, instinctive trained
22 response. It fatally struck Dakota Bright. It wasn't
23 a calm, deep breath using both sides like you would on
24 the range.

1 We can all learn lessons from the events
2 of November 8, 2012. We can improve the safety of
3 police officers. And we can improve the safety of the
4 offenders that Chicago Police Officers are charged to
5 apprehend. But we should not compound one tragedy with
6 another by terminating the career of Officer Ternand.

7 I pray, Madame Hearing Officer, and the
8 members of the Board, that you send the right signal to
9 Officer Ternand and to all the other Chicago Police
10 officers that find themselves in those same and fearful
11 situations, and that we honor our commitment to Officer
12 Ternand that we ask him to do a dangerous job everyday
13 and ask him to fight gun violence and gangs and put his
14 life on the line everyday. And that applies not just
15 to Officer Ternand, but all of the Chicago Police
16 officers. And I ask and I pray that we return Officer
17 Ternand immediately to the force of the Chicago Police
18 Department so he can continue with his excellent
19 service to the citizens of Chicago. Thank you.

20 HEARING OFFICER WOOD: Thank you. Anything
21 further?

22 MR. FIEWEGER: Very briefly.

23 FURTHER CLOSING ARGUMENT

24 MR. FIEWEGER: I believe that Mr. Thompson

1 misspoke when he said we have to base our analysis
2 solely on the feelings and emotions of Brandon Ternand
3 and we can't assess Dakota Bright's perspective. That
4 is not the standard. The standard that we have to
5 apply here is what would a reasonable officer in that
6 position do under those totality of circumstances. In
7 fact that standard excludes what Mr. Ternand was
8 personally thinking and feeling at that moment.

9 You might be able to consider in that
10 circumstance what a reasonable officer would experience
11 those emotions. But the fact that Officer Ternand was
12 experiencing them is actually expressly excluded from
13 the analysis. That is not how we are supposed to
14 assess this under Graham vs. Connor.

15 And just to make sure I'm clear to the
16 Board what my position is when I asked the Board to
17 think about things from the perspective of Dakota
18 Bright, why in the world would he turn to confront
19 somebody whom he knows to be armed and chasing him when
20 he knows he is not armed. He wouldn't. It wouldn't
21 make sense. The reason I offer that to the Board is
22 not to think about what Dakota Bright was thinking, but
23 have the Board assess what the actual circumstances
24 were. Was Dakota Bright turning towards Officer

1 Ternand when he was shot? The medical examiner report
2 suggests no. And the circumstances, and Dakota
3 Bright's circumstances in this case suggests it doesn't
4 make sense.

5 So I'm not asking the Board to look at
6 it from Dakota Bright's perspective other than to think
7 about would it be reasonable for him to take the
8 actions that are attributed to him.

9 Unfortunately when we look at the
10 objective evidence in this case, it doesn't make sense
11 that Dakota Bright was in the process of facing towards
12 Officer Ternand. And as a result, it doesn't make
13 sense that there was a reasonable basis to use deadly
14 force against him. Thank you.

15 HEARING OFFICER WOOD: That will conclude
16 this hearing. I want to especially thank all Counsel
17 for putting on a professional trial and that will
18 conclude our hearing. Thank you all.

19 MR. THOMPSON: Before you do, I'm going to
20 move my exhibits into evidence. And if we could take a
21 break, I want to run through them with Co-counsel so
22 that we are clear on, which I think we are. So
23 hopefully we can do that within the next ten minutes or
24 so.

1 HEARING OFFICER WOOD: All right. We have
2 not concluded. We'll take a ten-minute break and come
3 back and take care of the exhibits.

4 (BRIEF RECESS)

5 HEARING OFFICER WOOD: Back on the record.

6 Counsel is going to explain exhibits
7 that are being admitted or withdrawn and clarify what
8 is part of the record.

14 MR. FIEWEGER: Off the record.

15 (Discussion held off the record)

16 HEARING OFFICER WOOD: Back on the record.

17 Counsel, why don't you tell me based on
18 the exhibit list which exhibits are not going to be
19 admitted.

20 MR. THOMPSON: So on our list, Exhibit Number
21 11, which is a Case Supplement report, that is not
22 being admitted. Exhibits 20 through 24 are not being
23 offered. Exhibit 33, a photograph, is not being
24 admitted.

1 HEARING OFFICER WOOD: Okay. I'm sorry. I
2 got lost. Because my Exhibit 11 says photograph of
3 Dakota Bright.

4 MS. WHALEY: I think that might be the old
5 list from the prehearing conference.

6 HEARING OFFICER WOOD: There is a new list?

7 MR. THOMPSON: I'm sorry. For sure.

8 HEARING OFFICER WOOD: So this list is not
9 good.

10 MR. FIEWEGER: So just give her that list.

11 MR. THOMPSON: It's marked so, 11 is not
12 being admitted. 20 through 24, 33 is not, 36 is not.
13 All the rest are.

14 HEARING OFFICER WOOD: Okay and your Exhibit
15 Numbers 1 through 46.

16 MR. THOMPSON: Yes.

17 HEARING OFFICER WOOD: Exhibit 1 through 46
18 have all been admitted, except Exhibit 11. Exhibit 20
19 through 24, Exhibit 33 and Exhibit 36. Total agreement
20 from the City.

21 MR. FIEWEGER: No objection to those being
22 offered.

23 HEARING OFFICER WOOD: Great. We can keep
24 this list. Thank you so much. This does now conclude

1 our hearing.

2 (WHEREUPON the hearing was adjourned at
3 1:37 p.m.)

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3 COUNTY OF COOK)

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5 C E R T I F I C A T E

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7 The within and foregoing hearing was taken
8 before GWENDOLYN BEDFORD, Certified Shorthand Reporter
9 in the City of Chicago, County of Cook and State of
10 Illinois, and there were present at the hearing Counsel
11 as previously set forth.

12 The undersigned is not interested in the
13 within case, nor of kin or counsel to any of the
14 parties.

15 IN TESTIMONY WHEREOF, I have hereunto set my
16 hand this 28th day of June, 2018.

17 
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GWENDOLYN BEDFORD, C.S.R.
No. 084-003700

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